



State of Utah

Department of
Natural Resources

ROBERT L. MORGAN
Executive Director

Division of
Oil, Gas & Mining

LOWELL P. BRAXTON
Division Director

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Governor

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Lieutenant Governor

October 21, 2004

CERTIFIED RETURN RECEIPT
7002 0510 0003 8602 8895

Danny Bown
595 East 600 South
Manti, Utah 84642

Subject: Proposed Assessment for State Notice of Violation No. (MN-04-01-06(1),
Danny Bown, Nine Mile Quarry, S/039/010, Sanpete County, Utah

Dear Mr. Bown:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced notice of violation (NOV). The NOV was issued by Division Inspector, Lynn Kunzler, on September 23, 2004.

Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violations as follows:

- Violation 1 of 1 \$440

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information, which was submitted by you or your agent within fifteen (15) days of receipt of this NOV has been considered in determining the facts surrounding the violation and the amount of this penalty.

Under R647-7-106, there are two informal appeal options available to you:

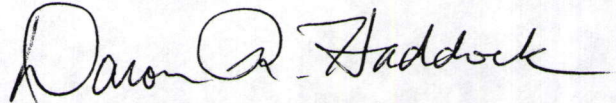
1. If you wish to informally appeal the fact of this NOV, you should file a written request for an Informal Conference within thirty 30 days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within

Danny Bown
Page 2
Proposed Assessment
S/039/010
October 21, 2004

thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and the penalty will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,

A handwritten signature in black ink, appearing to read "Daron R. Haddock". The signature is fluid and cursive, with the first name "Daron" and last name "Haddock" clearly distinguishable.

Daron R. Haddock
Assessment Officer

Enclosure: worksheet

cc: Vicki Bailey, Accounting
Vickie Southwick, Exec. Sec.

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COMPANY / MINE Danny Bown PERMIT S/039/010
NOV / CO # MN-2004-01-06(1) VIOLATION 1 of 1

ASSESSMENT DATE October 21, 2004

ASSESSMENT OFFICER Daron R. Haddock

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** *The operator has been conducting mining operations outside the area that was permitted. A new road was constructed and the disturbed area expanded without first having a permit modification approved.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 5

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that an additional 1.22 acres of land outside of the approved mining area has been disturbed. Mining is being conducted in accord with the existing notice of intent, but not in an area that they are authorized to mine. Actual environmental harm may not be evident but some damage is occurring due to the fact that the area is disturbed without authorization and right of entry. This equates to points (5) in the lower part of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 25

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 5

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector indicated that the operator did not realize he needed to amend the plan before expanding onto this area. This indicates indifference to the rules or misunderstanding of the rules. A prudent operator would understand the need to provide the revised NOI prior to disturbing an area. The Operator thought as long as he was within his lease and under 5 acres he was in compliance. The Operator did not take reasonable care to ensure that he was within the area approved for disturbance, thus the assignment of points in the lower part of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)

(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? difficult (requires the submission of plans)

ASSIGN GOOD FAITH POINTS -10

PROVIDE AN EXPLANATION OF POINTS:

*** *The Operator submitted plans on October 6, 2004, well before the October 15th deadline. The inspector visited the site again on October 20, 2004, and found that much of the site had been reclaimed to within the area allowed under the current notice of intent. The rest of the work is expected to be completed shortly. An extension was granted to November 23, 2004. Although the abatement has not been totally completed as of this date, most of the work has been accomplished, therefore good faith points are awarded at the top of the Normal Compliance Range.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-04-01-06(1)</u>		
I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>25</u>
III.	TOTAL NEGLIGENCE POINTS	<u>5</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-10</u>
	TOTAL ASSESSED POINTS	<u>20</u>
TOTAL ASSESSED FINE		<u>\$ 440</u>